

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES of AMERICA
ex rel. DANIEL MONTES, JR. and
ELIZABETH H. HUDSON,

Plaintiff-Relators,

v.

MAIN BUILDING MAINTENANCE,
INC.; JXM, INC.; ROBERT A. XIMENES;
ELVIRA H. XIMENES; and MARGAUX
I. XIMENES,

Defendants

Civil Action No.:
5-16-CV-00523-JKP-RBF

THE PARTIES' JOINT SCHEDULING RECOMMENDATIONS

Pursuant to this Court's order of February 22, 2021, counsel for the parties have conferred with respect to discovery and scheduling recommendations to submit to this Court. The first Motion for Judgment on the Pleadings was filed in this matter before any documents were exchanged, effectively staying discovery even before a stay was entered in this case. As a result, and because the Relators have amended the complaint, the parties have agreed to propound new discovery requests in lieu of supplemental responses to prior requests. The parties do not believe it is necessary to re-serve initial disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, but will supplement or amend initial disclosures as appropriate under Rule 26(e).

The parties are mindful of the deadlines entered in this Court's prior Scheduling Order, entered on November 8, 2019 (ECF #53), but they reasonably anticipate needing additional time due to potential travel for depositions and due to the need for discovery from the United States and the inevitable time it will take to comply with the applicable *Touhy* regulations. While based on the dates set forth in the November 8, 2019 Scheduling Order, therefore, the dates proposed below contemplate approximately two months' additional time in the discovery period before the deadlines for designation of experts and subsequent deadlines. Requests for extension of these deadlines are reasonably likely, and will likely depend on the nature and timing of the government's response to the *Touhy* requests. Mindful of this Court's comments regarding scheduling, the parties believe the deadlines below represent the minimum amount of time in which discovery can be expected to be completed.

1. The parties have already filed a report on alternative dispute resolution in compliance with Local Rule CV-88(b). ECF #55. No further report is necessary at this time.
2. Parties asserting claims for relief shall submit a written offer of settlement to opposing parties on or before **June 2, 2021**, and each opposing party shall respond, in writing on or before **June 9, 2021**. All offers of settlement are to be private, not filed. The parties shall retain the written offers of settlement and response, as the Court will use these in assessing attorneys' fees and costs at the conclusion of the proceedings. At any time, if any parties reach a settlement, they should immediately notify the Court by filing a joint advisory. The joint advisory shall state the parties who reached the settlement and whether a settlement conference is required or desired. If a hearing is requested, the parties shall confer and provide mutually agreeable potential dates for the hearing.
3. The pleadings have closed. Any requests for amendments shall be governed by Federal Rule of Civil Procedure 15. To the extent it may apply in this case, the deadline for Defendant(s) to file a motion to designate responsible third parties, pursuant to Texas Civil Practices & Remedies Code § 33.004(a), is **May 3, 2021**.
4. Parties asserting claims for relief shall file their designation of testifying experts and serve on all parties, but not file, the materials required by Federal Rule of Civil Procedure 26(a)(2)(B), on or before **October 4, 2021**.
5. Parties resisting claims for relief shall file their designation of testifying experts and serve on all parties, but not file, the materials required by Federal Rule of Civil Procedure 26(a)(2)(B), on or before **November 4, 2021**.
6. Parties shall file all designations of rebuttal experts and serve on all parties the material required by Federal Rule of Civil Procedure 26(a)(2)(B) for such rebuttal experts, to the extent not already served, within fourteen days of receipt of the report of the opposing expert.
7. The deadline to file supplemental expert reports required under Federal Rule of Civil Procedure 26(e)(2) is at least 30 days before trial. The parties are advised any report filed under this deadline may only supplement the initial report and may not introduce new opinion or subject matter. This deadline is not intended to provide an extension of the deadline by which a party must deliver the substance

of its expert information or opinion.

8. Parties shall initiate all discovery procedures in time to complete discovery on or before **January 6, 2022**. Written discovery requests are not timely if they are filed so close to this deadline that under the Federal Rules of Civil Procedure the response would not be due until after the expiration of the deadline. *See* Local Rule CV-16(d). Counsel may by agreement continue discovery beyond the deadline. The parties are advised that should they agree to extend discovery beyond the deadline, there will be no intervention by the Court except in exceptional circumstances. No trial setting or other deadline set forth herein will be vacated due to information obtained in post-deadline discovery. *See* Local Rule CV-7(d).
9. Counsel shall confer and file a joint report setting forth the status of settlement negotiations on or before **January 20, 2022**.
10. On or before **January 20, 2022**, the parties shall file any *Daubert* motions and challenge to or motion to exclude expert witnesses. Any such motion must specifically state the basis for the objection and identify the objectionable testimony.
11. On or before **February 22, 2022**, parties shall file any dispositive motions, including motions for summary judgment on all or some of the claims. Further, notwithstanding any deadline provided herein, no motion (other than a motion in limine) may be filed after this date except for good cause.
12. The Court will set dates for trial and the final pretrial conference after ruling on any dispositive motions or after the deadline for such motions passes without a pertinent filing. At that time, the Court will also set appropriate deadlines for trial and pretrial conference matters.
13. All of the parties who have appeared in the action conferred, through their counsel, concerning the contents of the proposed scheduling order on February 24, 2021, and have agreed as to its contents.

Dated: March 1, 2021

Respectfully submitted, by:

/s/Michael Tabb

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CERTIFICATE OF SERVICE

I hereby certify that, on March 1, 2021 this document (filed through the ECF system) was sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: March 1, 2021

/s/ Michael Tabb

Michael Tabb